

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

NATIXIS, NATIXIS CORPORATE &
INVESTMENT BANK (f/k/a IXIS
CORPORATE & INVESTMENT BANK),
NATIXIS FINANCIAL PRODUCTS INC.,
BLOOM ASSET HOLDINGS FUND, and
TENSYS LIMITED,

Defendants.

Adv. Pro. No. 10-05353 (SMB)

STAY STIPULATION AND ORDER

Plaintiff Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–*lll*, and the chapter 7 estate of Bernard L. Madoff, and defendants Natixis S.A. (in its own capacity and as successor-in-interest to IXIS Corporate & Investment Bank), Natixis Financial Products LLC (as successor-in-interest to Natixis

Financial Products Inc.) (“Natixis FP”), Bloom Asset Holdings Fund (“Bloom”), and Tensyr Limited (collectively, the “Defendants” and, together with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

WHEREAS, on December 8, 2010, the Trustee commenced adversary proceeding no. 10-05353 (the “Action”) against Defendants to recover subsequent transfers allegedly received from Fairfield Sentry Limited, Fairfield Investment Fund Limited, Groupement Financier Limited, Alpha Prime Fund Limited, and Harley International (Cayman) Limited;

WHEREAS, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014);

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers received from Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Kingate Global Fund Limited, Kingate Euro Fund Limited, and Harley International (Cayman) Limited on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, the Bankruptcy Court ET Decision dismissed all claims against Natixis S.A., Bloom, and Tensyr Limited, as well as certain claims against Natixis FP;

WHEREAS, on December 28, 2018, the Trustee filed his Motion for Leave to File Amended Complaint (the “Motion”) against the remaining defendant, Natixis FP. *See Picard v. Natixis*, Adv. Pro. No. 10-05353 (SMB) (Bankr. S.D.N.Y. Mar 28, 2019), ECF No. 169;

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

WHEREAS, on March 28, 2019, the Trustee and Defendants Natixis S.A., Natixis FP, and Bloom entered into a Stipulation and Order Concerning the Trustee’s Motion, *Picard v. Natixis*, Adv. Pro. No. 10-05353 (SMB) (Bankr. S.D.N.Y. Mar 28, 2019), ECF No. 181 (the “March 2019 Stipulation”), agreeing to withdraw the Motion and stay the Action until sixty days from the Second Circuit’s issuance of the mandate in respect of the ET and Comity Decision;

WHEREAS, on April 23, 2019, the Court of Appeals for the Second Circuit stayed issuance of the mandate in respect of the ET and Comity Decision pending the disposition of a Petition for Writ of Certiorari in the Supreme Court on its decision. *See In re Picard*, Case No. 17-2992 (2d Cir. Apr. 23, 2019), ECF Doc. No. 1503;

WHEREAS, on August 29, 2019, Defendants filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit’s mandate until the Supreme Court’s final disposition. *See* Petition for Writ of Certiorari, *HSBC Holdings PLC v. Picard*, No. 19-277 (2019), 2019 WL 4190391;

WHEREAS, on December 20, 2019, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision denying the Trustee’s motion for leave to file amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision granting, in part, the motion to dismiss

the Trustee's amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the "Good Faith Appeals");

WHEREAS, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee's petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25.

WHEREAS, on June 8, 2020, the Second Circuit granted appellants' motion to have the *Citibank* and *Legacy* appeals be heard in tandem. *See In re BLMIS LLC*, Case No. 20-1334 (2d Cir. Jun. 8, 2020), ECF No. 41.

WHEREAS, there are two other appeals related to the good faith defense that may potentially be heard by the Second Circuit: (i) on June 9, 2020, the defendant in *Picard v. ABN AMRO Bank N.V.* filed a motion to the District Court, Southern District of New York requesting certification of a direct appeal to the Second Circuit, which has not yet been decided, see Case No. 20-cv-3684 (Judge Valerie E. Caproni), ECF No. 13; and (ii) on June 11, 2020, Southern District of New York District Court Judge Colleen McMahon granted the motion of the defendant in *Picard v. ABN AMRO Bank (Ireland)* requesting certification of a direct appeal to the Second Circuit and found that "[t]he present action, *Citibank*, and *Legacy* involve similar and overlapping facts and issues of law," see Case No. 20-cv-2586, ECF No. 24, and, on June 18, 2020, defendant petitioned the Second Circuit for permission to file said appeal, Case 20-1898, ECF No. 1 (together, the "ABN AMRO Good Faith Appeals");

WHEREAS, the Good Faith Appeals and the ABN AMRO Good Faith Appeals (if direct appeals are heard by Second Circuit) will seek review by the Second Circuit of, *inter alia*, an order of the United States District Court for the Southern District of New York, *SIPC v. BLMIS*,

516 B.R. 18, 21–24 (S.D.N.Y. 2014), that, *inter alia*, determined the standard the Trustee must meet in order to plead a lack of good faith under either 11 U.S.C. §§ 548(c) or 550(b);

WHEREAS, on June 1, 2020, the Supreme Court denied Defendants’ Petition for a Writ of Certiorari. *See* Order, *HSBC Holdings PLC v. Picard*, No. 19-277 (2020), 2020 WL 2814770;

WHEREAS, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF Doc No. 1582, directing that the judgments of the Bankruptcy Court in connection with the Bankruptcy Court ET Decision are vacated and the matters are remanded for further proceedings consistent with this Second Circuit’s ET and Comity Decision;

WHEREAS, the Parties agree that a resolution of the Good Faith Appeals (as well as the ABN AMRO Good Faith Appeals, if permission for direct appeal is granted) by the Second Circuit could materially affect, *inter alia*, the scope of the Trustee’s claims in the Action and/or the scope of any discovery in the Action; and

WHEREAS, the Parties further agree that a stay of the Action pending resolution of the Good Faith Appeals (as well as the ABN AMRO Good Faith Appeals, if permission for direct appeal is granted) by the Second Circuit is in the interest of all parties and would promote judicial economy.

IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, that the Action is stayed until the issuance of orders from the Second Circuit in the Good Faith Appeals;

IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, that any Party may seek to modify this stipulation if the Second Circuit grants permission for direct appeal in either of the ABN AMRO Good Faith Appeals; and

IT IS FURTHER STIPULATED AND AGREED that the March 2019 Stipulation is hereby withdrawn as moot. Nothing herein shall be deemed to affect any Party's rights and defenses, all of which are expressly reserved, including, without limitation, all defenses as to the proper exercise of jurisdiction, the appropriate forum and the right of Defendants to challenge the legal sufficiency of any current or future claim or complaint.

Dated: July 1, 2020
New York, New York

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own capacity and as successor-in-interest to
IXIS Corporate & Investment Bank), Natixis
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interest to Natixis Financial Products Inc.),
and Bloom Asset Holdings Fund*

Dated: **July 1, 2020**

SO ORDERED.

/s/ STUART M. BERNSTEIN
HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE